

United States Senate

WASHINGTON, DC 20510

September 28, 2011

The Honorable Barack Obama
President of the United States
The White House
1600 Pennsylvania Ave. NW
Washington, DC 20500-0005

Dear Mr. President:

We are requesting that your Fiscal Year 2013 (FY 2013) proposed budget to Congress include full contract support and joint venture staff funding to strengthen tribal self-governance, support economic self-sufficiency, and honor the government's agreements with Indian Tribes.

As you know, the federal Indian policy of tribal self-determination has succeeded in substantially improving the lives of American Indians and Alaska Natives. *The Indian Self-Determination Act and Education Assistance Act* of 1975 (Pub. L. No. 93-638) allowed Indian tribes to take control of the welfare of their tribal citizens by managing the federal programs for the benefit of Indians under contract while preserving the federal trust responsibility of the United States.

Today, under Pub. L. No. 93-638 the Departments of the Interior and Health and Human Services contract with Indian tribes and tribal organizations across 35 states to administer over \$2.3 billion in government services that would otherwise be administered by the U.S. government. Under these contracts, Tribes operate hospitals and clinics, administer welfare assistance programs, run police departments, and carry out a vast array of other governmental activities in such areas as education, housing and land and resource management—all of which the federal government would be otherwise running.

Pub. L. No. 93-638 requires the Tribes be paid in full for the "contract support costs" which they incur to administer these contracts. These fixed overhead costs are annually established by the federal government, primarily the Interior Department's National Business Center. These costs cover such necessary contract expenses as the cost of federally-mandated annual audits and property, and workers' compensation insurance. When these fixed costs are not paid, Tribes are compelled to divert resources by leaving positions vacant in the contracted programs serving their members in order to make up the difference.

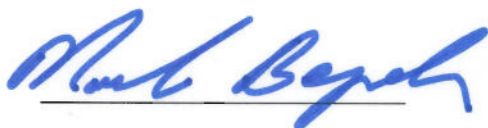
To be clear, health care, law enforcement and other positions are not being filled because the government is failing to pay full contract support costs. The federal government would never underpay ordinary procurement contractors their agency-approved costs in running government contracts, and a different rule not should apply here. Indeed, in 2005 the U.S. Supreme Court reaffirmed the binding nature of the federal government's duty to pay tribal contract support costs under *Indian Self-Determination Act* contracts.

The FY 2012 Budget Request anticipated an IHS contract support shortfall of \$159 million, and the Bureau of Indian Affairs (BIA) has informally estimated that its shortfall in FY 2012 will be at least \$8 million. These contract obligations must be paid, so critical employment under contracted programs serving Indian communities can be restored. We request your FY 2013 proposed budget to Congress fully fund IHS contract support costs at \$615 million, and BIA contract support costs at \$228 million.

Additionally, Joint Venture Projects authorized under section 818(e) of the *Indian Health Care Improvement Act* (Pub. L. No. 94-437) are critically important partnerships for both the Administration and Native American communities in building needed health care facilities without burdening the IHS construction budget. Over the past several years, Tribes have partnered with IHS and committed substantial funds to construct clinics. As these clinics come on-line in FY 2013, Tribes are gravely concerned that, in a time of tightening budgets, the Administration may walk away from its legal obligation to staff the clinics when they open. We reiterate Congress's intent under current law for the Administration to honor these partnerships by fully funding the staffing required to operate these and other IHS facilities coming online in this timeframe.

We appreciate your Administration's past support for the *Indian Self-Determination Act* and the Joint Venture Projects, and we strongly encourage appropriate sums to fully cover these obligations be designated in your FY 2013 budget request to Congress. Doing so will strengthen tribal self-governance, support economic self-sufficiency and create needed jobs across rural America.

Sincerely,



My Baucus

Jeff Bingaman

Jeffrey A. Merkley

Lee Neubauer

Ally

Jim Tester
Tom Udare